

Remarks

Claims 1, 3-7, and 19-47 were pending in the subject application. By this Amendment, claims 1, 3-7, and 19-29 have been cancelled. The undersigned avers that no new matter is introduced by this amendment. Accordingly, claims 30-47 are currently before the Examiner for consideration. The claim cancellations set forth herein should not be interpreted to indicate that the applicants have agreed with, or acquiesced to, the rejections set forth in the outstanding Office Action. Favorable consideration of the claims now presented, in view of the remarks and amendments set forth herein, is earnestly solicited.

The applicants gratefully acknowledge the Examiner's indication at page 6 of the Office Action that claims 30-38, 40, and 42-47 are allowable in the subject application.

The applicants and the applicants' representative wish to thank Examiner Falk for the courtesy of the telephonic interview conducted with the undersigned on January 29, 2004, regarding the prior art rejection under 35 U.S.C. §102(b), and the Sequence List used by the Patent Office for the sequence search. In particular, the sequences set forth as SEQ ID NO: 9 in the substitute Sequence List of record (the current Sequence List submitted on October 28, 2002) and in the previous Sequence List (submitted on July 6, 2001) were discussed. The remarks set forth herein are consistent with the substance of the interview and are believed to address the outstanding issues as discussed during the interview.

Claims 1, 3-7, and 19-29 remain rejected under 35 U.S.C. §112, first paragraph, as lacking sufficient written description. The applicants respectfully submit that the subject specification does provide a sufficient written description of the genus of carbohydrate responsive mRNA instability elements, and conveys to one of ordinary skill in the art that the applicants had possession of the concept of what is claimed. However, as indicated above, the applicants have cancelled claims 1, 3-7, and 19-29, rendering this rejection moot.

Claims 21, 23, 39, and 41 remain rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,795,961 (Wallace *et al.*). The applicants respectfully submit that the Wallace *et al.* patent does not teach or suggest the applicants' invention as currently claimed. Claims 21 and 23 have been cancelled by this Amendment. Claims 39 and 41 recite that the primer and probe are

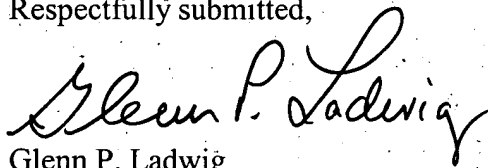
capable of hybridizing to at least 15 consecutive bases of the nucleic acid sequence of SEQ ID NO: 9. As acknowledged in the Interview Summary dated February 4, 2004, the previous Sequence List submitted on July 6, 2001 was used by the Patent Office for the sequence search, instead of the current Sequence List of record submitted on October 28, 2002. The queried sequence in the sequence alignment provided with the previous Office Action included nucleotides 6 to 31 of SEQ ID NO: 9 from the previous Sequence List. SEQ ID NO: 9 of the current Sequence List of record is different from that of the previous Sequence List. The applicants respectfully submit that the Wallace *et al.* patent does not teach or suggest the primer or probe of the invention, as currently claimed. Reconsideration and withdrawal of the rejection under 35 U.S.C. §102(b) is respectfully requested.

In view of the foregoing remarks and amendments to the claims, the applicants believe that the currently pending claims are in condition for allowance, and such action is respectfully requested.

The Commissioner is hereby authorized to charge any fees under 37 C.F.R. §§ 1.16 or 1.17 as required by this paper to Deposit Account 19-0065.

The applicants invite the Examiner to call the undersigned if clarification is needed on any of this response, or if the Examiner believes a telephonic interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,



Glenn P. Ladwig
Patent Attorney

Registration No. 46,853

Phone No.: 352-375-8100

Fax No.: 352-372-5800

Address: Saliwanchik, Lloyd & Saliwanchik
A Professional Association
2421 NW 41st Street, Suite A-1
Gainesville, FL 32606-6669

GPL/mv